

ASSIGNMENT OF CONSTRUCTION CONTRACT

THIS ASSIGNMENT OF CONSTRUCTION CONTRACT (this “Assignment”) is made as of _____, 200__, by [borrower], a California limited partnership (“Borrower”), to and for the benefit of California Housing Finance Agency (“Lender”).

1. Assignment. FOR VALUE RECEIVED, Borrower does hereby sell, assign, pledge, transfer and set over unto Lender, all of its rights, title, interest, privilege, benefit and remedies in, to and under certain construction contract (the “Contract”) dated _____, entered into and between Borrower and [contractor] (“Contractor”) for the construction of those certain improvements consisting of multi-family housing project located at or commonly known as _____, _____, California (the “Development”), and all amendments, modifications, supplements, general conditions and addenda thereto (the “Contract”).

2. Absolute Assignment. This Assignment constitutes a present and absolute assignment to Lender as of the Effective Date; provided, however, Lender confers upon Borrower the right to enforce the terms of the Contract and Borrower's rights to the Plans and Specifications so long as no Default or event which would constitute a Default after notice or the passage of time, or both, has occurred and is continuing under any of the Loan Documents. This Assignment is made as additional collateral to secure the construction loan (the “Loan”) made or to be made by Lender to Borrower pursuant to that certain Construction and Term Loan Agreement dated _____, 200__, (the “Construction Loan Agreement”) evidenced by the Note.

3. Remedies on Default. Upon the occurrence of a Default or event which would constitute a Default after notice or the passage of time, or both, under any of the Loan Documents, Lender may, in its sole discretion, give notice to Contractor of its intent to enforce the rights of Borrower under the Contract and of its rights to the Plans and Specifications and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Borrower acknowledges that by accepting this Assignment, Lender does not assume any of Borrower's obligations under the Contract or with respect to the Plans and Specifications. For the purpose of completing the Development, Lender may in turn assign its right, title and interest in the Contract to any persons or entities in Lender's discretion. Lender shall notify Contractor and Borrower of the assignment, but their consent shall not be required and the assignment shall be as binding as if Borrower and Contractor had each expressly approved it.

4. Power of Attorney. Borrower hereby irrevocably constitutes and appoints Lender as its attorney-in-fact to demand, receive and enforce Borrower's rights and remedies under and with respect to the Contract and to make payments under the Contract and to give appropriate receipts, releases and satisfactions for and on behalf of and in the name of Borrower (or, at the option of Lender, in the name of Lender) with the same force and effect as if Borrower itself had done so. This power of attorney is coupled with an interest and shall survive the death or incapacity of Borrower.

5. Representations. Borrower represents and warrants to Lender, as of the Effective Date, that: (a) the Contract is in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Contract; (b) all copies of the Contract delivered to Lender are complete and correct; and (c) neither Borrower nor Borrower's assignor if any has assigned any of its rights under the Contract, other than as set forth herein.

6. Covenants. Borrower agrees: (a) to pay and perform all obligations of Borrower under the Contract; (b) to enforce the payment and performance of all obligations of any other person or entity under the Contract; (c) not to modify the existing Contract nor to enter into any future Contract

without Lender's prior written approval except as otherwise may be permitted in the Loan Documents; (d) not to further assign, for security or any other purposes, its rights under the Contract or with respect to the Plans and Specifications without Lender's prior written consent; and (e) to indemnify and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, costs and expenses (including but not limited to actual attorneys' fees, whether or not incurred on appeal) to which Lender may become exposed, or which Lender may incur, in exercising any of its rights under this Assignment or under the Contract.

7. Relation to Loan Documents. This Assignment is one of the Loan Documents and secures payment and performance by Borrower of all obligations of Borrower under the Loan Documents. This Assignment is supplemented by those provisions of the Construction Loan Agreement which apply to the Loan Documents and said provisions are incorporated herein by reference. This Assignment is part of and further defines the assignment of contract rights and other rights set forth in the "Security Agreement" provision (Article 4) of the Deed of Trust.

The term "Construction Loan Agreement" as used herein shall mean the construction loan agreement or loan agreement, as applicable, of even date herewith between Borrower and Lender, as well as any future construction loan agreements or loan agreements between Borrower and Lender which refer to this Assignment. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Construction Loan Agreement.

8. Governing Law. This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and Borrower consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

9. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Borrower and Lender, provided, however, this shall not be construed and is not intended to waive any restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by Borrower contained in any of the Loan Documents.

The attached Contractor's Consent and any attached schedules and exhibits are incorporated by this reference.

Executed by Borrower on _____, 200__.

BORROWER

[borrower],
a California limited partnership

By [general partner], a California
nonprofit public benefit corporation, its general partner

By _____
Name: _____
Title: _____

CONTRACTOR'S CONSENT

1. The undersigned contractor (collectively referred to as “Contractor”) hereby consents to the foregoing Assignment to which this Contractor's Consent (“Consent”) is a part, and acknowledges that there presently exists no unpaid claims due to the Contractor except as set forth on Schedule 1 attached hereto, arising out of the performance of the Contractor's obligations under the Contract described in the Assignment.

2. In the event of default by Borrower under any instrument, document or agreement relating to the Loan, Contractor, at Lender's request, will continue performance under the Contract in accordance with its terms, provided that Contractor shall be reimbursed in accordance with the Contract for all work, labor and materials so rendered. Similarly, notwithstanding any terms of the Contract to the contrary, Contractor will diligently continue the work of construction of the Project notwithstanding any dispute arising with Borrower, Lender or any other person or entity, so long as Contractor continues to be paid for all work not in dispute in accordance with the terms of the Contract. Contractor may not discontinue performance because of lack of reimbursement or payment unless and until Lender and any designee is first notified in writing of such lack of reimbursement or payment and such reimbursement or payment is not tendered to Contractor within ten (10) days after receipt of such notice. Nothing herein obligates Lender or its designee to so tender; however, in the absence of timely tender this Consent will no longer obligate Contractor to continue performing under the Contract.

3. Contractor shall not without Lender's prior written consent perform work pursuant to any change order which will result in increase in the contract price by the greater of: (i) any material amount or (ii) the amount of the change order limit, if any, specified in the Construction Loan Agreement.

4. The provisions of the Construction Loan Agreement that relate to the construction of the Project or disbursement of funds with respect to construction of the Project shall prevail over any conflicting provision of any contract between Contractor and Borrower.

5. Lender or its designee may enforce the obligations of the Contract with the same force and effect as if enforced by Borrower, and may (but need not) perform the obligations of Borrower, and Contractor will accept any such performance in lieu of performance by Borrower in satisfaction of Borrower's obligations thereunder. Nothing in this Consent shall be construed as a waiver or limitation of any claim of Contractor against Borrower for nonpayment of any sums owing to Contractor, but Contractor shall not have any right against Lender to demand disbursement of the Loan nor any claim or interest in any part of the Loan.

6. Contractor hereby covenants, represents and warrants to Lender that:
- (i) the Contract is a valid, binding and enforceable agreement to build;
 - (ii) there has been no previous, and there will be no future, assignment of the Contract;
 - (iii) neither Contractor nor Borrower is in default under the Contract;
 - (iv) all applicable covenants, conditions and agreements contained in the Contract have thus far been performed or observed;
 - (v) the amounts allocated to each of the trades in the Cost Breakdown attached to the Construction Loan Agreement represent sufficient funds for each subcontractor or

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materials supplier to fulfill its contractual obligations with respect to the Project and the overall amount provided in the Cost Breakdown is and will be adequate to complete the Project with all contemplated on-site and off-site work, including permits and tie-in charges; and

(vi) Contractor is duly licensed to conduct its business in California and will maintain said license in full force and effect throughout the life of the Contract.

Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed as of _____, 200__.

“CONTRACTOR”

[contractor]

By: _____

Name: _____

Title: _____

Contractor's License No. _____

Contractor's Address:

Lender's Address:

California Housing Finance Agency
Office of General Counsel
1415 L Street, Suite 500
Sacramento, CA 95814
CalHFA Project No.:

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to Assignment of Construction Contract between [borrower], a California limited partnership, as Borrower, and California Housing Finance Agency, as Lender.

NONE

EXHIBIT A

PROPERTY DESCRIPTION

Exhibit A to Assignment of Construction Contract between [borrower], a California limited partnership, as Borrower, and California Housing Finance Agency, as Lender.